

75-1912

IN THE

SUPREME COURT OF THE UNITED STATES

DISTRICT UNEMPLOYMENT COMPENSATION BOARD,

Petitioner

v.

BENJAMIN ROSE INSTITUTE,

Respondent

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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Counter Statement of the Case

Mr. Valdon Walker, Jr. was employed
by the Respondent, the Benjamin Rose
Institute, in Ohio from January 24, 1973
to June 3, 1973. On the latter date,

Mr. Walker voluntarily resigned his employment with the Respondent in order to return to school. Prior to his employment with the Respondent, Mr. Walker had served in the United States armed forces. After leaving the employ of the Respondent, Mr. Walker entered graduate school. He subsequently left school and on March 5, 1974, applied to the District of Columbia Unemployment Compensation Board for unemployment compensation benefits based on the combined wages paid him by the Respondent in Ohio and by the United States armed forces.

Mr. Walker was found to be entitled to benefits. The Respondent appealed this determination to an Appeals Examiner of the Board. The basis of the Respondent's appeal was that under Ohio law the claim-

ant had not left his employment with the Respondent for good cause and so was not entitled to benefits based on his employment with the Respondent in Ohio. The Examiner ruled that the claimant was entitled to benefits based on his combined earnings, including those earned while employed by the Respondent in Ohio. The Respondent appealed this decision to the Board, which affirmed the Examiner.

The Respondent then filed a petition for review of the Board's decision with the District of Columbia Court of Appeals. That court set aside the Board's decision and stated that claimant's "right to benefits based on his employment with petitioner must be determined under Ohio law." Benjamin Rose Institute v. District Unemployment Compensation Board,

338 A. 2d 104 (D.C. Ct. of App. 1975).

Accordingly, the Court of Appeals remanded the case to the Board for further proceedings in accordance with the court's opinion.

The Board did not appeal or seek review of the above decision of the Court of Appeals. Rather, the Board directed that a further hearing be held before an Appeals Examiner. Following the hearing, the Examiner rendered a decision in which he applied District of Columbia law and so determined that the claimant had left his employment with the Petitioner for good cause and was entitled to benefits based on such employment.

The Respondent appealed this decision to the Board which affirmed the Appeals Examiner. The Respondent then

filed a second petition for review with the District of Columbia Court of Appeals.

The Court of Appeals again reversed the Board. The Court of Appeals stated that in its first opinion it had held that Ohio law is controlling on the question of Mr. Walker's right to benefits based on his employment with respondent in Ohio. The Court of Appeals concluded (1) that the Ohio Bureau of Employment Services had advised the Board that under Ohio law Mr. Walker had no such rights and (2) that therefore he was not entitled to increased benefits based upon a combined wage claim.

The Board then filed a Petition for Writ of Certiorari with the United States Supreme Court.

ARGUMENT

The issue which Petitioner seeks to have this Court review is res judicata. In Benjamin Rose Institute v. District Unemployment Compensation Board, 338 A. 2d 104 (D.C. App. 1975), the District of Columbia Court of Appeals held that Mr. Walker's right to unemployment benefits based on his employment with Respondent in Ohio must be determined under Ohio law. The Petitioner did not appeal or seek review of this decision.

Yet this is the precise issue upon which Petitioner now seeks Supreme Court review.

The only conclusion reached in the District of Columbia Court of Appeals decision of which Petitioner has sought

review from this Court is that if Ohio law is applied, the employee in this case is not entitled to unemployment compensation benefits based on his employment with Respondent in Ohio. But Petitioner does not dispute this conclusion. Rather, Petitioner has again raised the contention, which was rejected by the Court of Appeals in its first Benjamin Rose decision that District of Columbia, and not Ohio, law must be used to determine the employee's eligibility for benefits.

The District of Columbia Court of Appeals clearly stated in its second opinion that "we previously held [in the Court of Appeals first decision] that Ohio law on this point is controlling." When Petitioner failed to seek review of this holding, it became res judicata.

See Goff v. Finch, 317 F. Supp. 35 (M.D. Tenn. 1970), aff'd 445 F. 2d 852 (6th Cir. 1971); Jamerson v. Lennox, 356 F. Supp. 1164 (E.D. Penn. 1973), aff'd 414 U.S. 802 (1973). Petitioner cannot now obtain review of this issue from this Court. All of the arguments raised by Petitioner in its brief (which Respondent has not addressed but does not concede) should have been raised in a petition seeking review of the District of Columbia Court of Appeals' first decision. It is simply too late for Petitioner to raise them now.

CONCLUSION

The ruling of the District of Columbia Court of Appeals which Petitioner seeks to have this Court review is res

judicata and so not the proper subject for Supreme Court review. Therefore, Respondent prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

Robert D. Papkin
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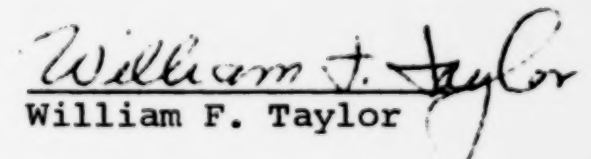
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July 30, 1976

Certificate of Service

I hereby certify that three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari have been mailed with first class postage prepaid to Bill L. Smith, District Unemployment Compensation Board, Employment Security Building, 6th and Pennsylvania Avenue, N.W., Washington, D. C. 20001, Counsel for Petitioner.


William F. Taylor

July 30, 1976